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Docket No.: A-2829

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MAIL STOP: APPEAL BRIEF-PATENTS

By:  Date: February 21, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before the Board of Patent Appeals and Interferences

Applic. No. : 09/852,348 Confirmation No.:4692  
Inventor : Lutz Richter et al.  
Filed : May 9, 2001  
Title : Gathering Stapler with Separate Drives  
and Method of Operating the Gathering  
Stapler  
TC/A.U. : 3721  
Examiner : Gloria R. Weeks  
Customer No. : 24131

Hon. Commissioner for Patents  
Alexandria, VA 22313-1450

REPLY BRIEF

S i r :

In response to the Examiner's Answer dated December 19, 2005,  
kindly consider the following remarks:

**Remarks:**

The Examiner's remarks on page 6 of the Examiner's Answer that column 5, lines 59-62 of Boss states "the separate drives (12, 14) allow for individual adjustment of respective subassemblies", is not correct. Boss actually discloses in column 5, lines 59-62, that "a critical point is that the drive 14 for the working and return strokes of punches 17 and shaping elements 18 be adjustable independently of the drive 12". Accordingly, Boss discloses that the interconnected drives are separately adjustable. Boss does not disclose that drives (12 and 14) are separate drives, Boss only discloses that they are adjustable independently of one another. Therefore, it is respectfully requested that the honorable board disregard the Examiner's comments pertaining column 5, lines 59-62 of Boss.

The Examiner's comments on page 7 of the Examiner's Answer that "there are no structural limitations claimed by Applicant's invention that correlates speed with the subassembly drives, other than the fact that the subassembly drives must be capable of synchronization with one other, which is disclosed by the subassembly drives of Raffoni", is incorrect. More specifically, the present invention as claimed recites a gathering stapler that has an ejector which

oscillates in parallel with the conveying strand. As noted in the appeal brief, gathering staplers run at speeds of 18,000 strokes per second. Raffoni does not disclose an oscillating ejector for a gathering stapler. Accordingly, the ejector as claimed in the instant application is a structural limitation that correlates speed with the subassembly drives. Therefore, it is respectfully requested that the honorable board disregard the Examiner's comments pertaining to a lack of structure correlating to speed.

The Examiner's comments in the third paragraph on page 7 of the Examiner's Answer that "Applicant's arguments drawn to Raffoni's lack of disclosure with respect to an oscillating ejector and oscillating stapling carriage is moot", is not correct. More specifically, because Raffoni does not disclose an ejector as required by the present invention, Raffoni does not provide any motivation for a person of ordinary skill in the art to modify an ejector as disclosed by Boss. Accordingly Appellants' arguments pertaining to Raffoni's lack of disclosure with respect to an oscillating ejector are not moot. Therefore, it is respectfully requested that the honorable board disregard the Examiner's comments in the third paragraph on page 7 of the Examiner's Answer.

The Examiner's comments on page 8 of the Examiner's Answer that "Raffoni suggest some form of synchronization between subassemblies, as the activation of one subassembly (31,38) is dependent on the function of another", is not pertinent. More specifically, the instant application as claimed recites an ejector adapted for operatively oscillating in parallel with the conveying strand for running in synchronicity with the conveying strand in the conveying direction. The instant application does not disclose "some form of synchronization between subassemblies." The instant application explicitly discloses a synchronization of an ejector for operatively oscillating in parallel with the conveying strand. Therefore, the fact that Raffoni may disclose that sensors detect a molding, which results in a movement of fixing tools, is not pertinent to appellants' arguments. Accordingly, it is respectfully requested that the honorable board disregard the Examiner's comments on pages 7 and 8 of the Examiner's Answer.

In view of the forgoing as well as the reasons presented in the Brief on Appeal dated September 26, 2005, the honorable Board is therefore respectfully urged to reverse the final rejection of the Primary Examiner and to remand the application to the Examiner with instructions to allow claims 6, 8, 10-12, 14 and 20-25 under appeal.

Respectfully submitted,

  
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AKD/bb

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